THE HON'BLE SRI JUSTICE GODA RAGHURAM

W.P.NO.8990 OF 2006

BETWEEN:

Kuri Koori Rama Rao

.. Petitioner

and

The Asst. Commissioner,

Endowment Department, W.G.Dt., and others

.. Respondents

THE HON'BLE SRI JUSTICE GODA RAGHURAM

W.P.NO.8990 OF 2006

ORAL ORDER:

The petitioner, aggrieved by the action of the respondent in conducting auction of leasehold rights of the land of Sri Subrahmanyeswara Swamy Temple (for

short Devasthanam) of an extent of Ac.4.77 cents in Survey No.123 and 124, situated at Kovvur Village, West Godavari District, has filed this writ petition.

The petitioner claims to be the cultivating tenant of the lands of the Devasthanam since the last 40 years. To a query from this Court, the petitioner feigns ignorance as to whether there is any existing formal instrument of lease executed by or on behalf of the Devasthanam conferring leasehold rights in respect of the lands in question in his favour, either under the provisions of the erstwhile Endowments Act, 1966 or the present Act i.e. The A.P. Charitable & Hindu Religious Institutions & Endowments Act, 1987 (for short the Act).

Be that as it may. The petitioner claims that he is a landless poor person within the meaning of the said expression under Section 82 of the Act and is therefore entitled to the benefits conferred on landless poor persons. Under Section 82 of the Act, the petitioner has applied to the first respondent for recognition as a landless poor person by the application dated 13.02.2006. While the said application is pending, contends the petitioner, the second respondent with a view to 'defeat the petitioner's right' directed the third respondent to conduct auction for grant of future leasehold rights of the Devasthanam lands. The petitioner also asserts that he has raised a sugarcane crop in the lands in 2003 and has entered into an agreement with a local sugar factory, Chagallu to sell sugarcane to the said factory. If the property is put to auction as per the process initiated by the respondents, the petitioner will suffer irreparable loss and prejudice, is the substance of the grievance, which is projected in this writ petition.

The law is too well settled that if public authorities intend to grant leases of a property, including lands of endowment institutions, administered by or under the aegis of public authorities like the Commissioner of Endowments, the leases must be granted only pursuant to a transparent public process, which ensures avoidance of extraneous influences like nepotism and favoritism and also ensure adequate and competitive returns on the assets of public authorities, religious endowments and charitable institutions.

This is well settled principle of law as also been incorporated in the provisions of the Act and finds express mention in Sections 80 and 82 of the Act. Section 80 deals with alienation of immoveable property and Section 82 with agricultural

lands. In respect of the leases of agricultural lands, the statutory rules are issued in G.O.Ms.No.379, Revenue (Endowments. I), dated 11.3.2003 of A.P. Charitable and Hindu Religious Institutions and Endowments Lease of Agricultural Lands Rules, 2003, which ordain that all leases shall be by public auction. There is however, a proviso that the competent authority may on a request made in writing by the Executive Authority, permit the lease of any property otherwise than by public auction, if he is satisfied, for reasons to be recorded in writing, that the alternative is necessary and in the interests of the institution or Endowment. The several sanctions and safeguards provided in the Rules, 2003 compel an inference that the statutory injunctions are mandatory; that the normal procedure of lease of agricultural lands belonging to Charitable and Hindu Religious institutions is to be by public auction; and when public auction is eschewed for any rational reason, the competent authority must record reasons for the deviation, so as to ensure a disciplined approach. It is axiomatic, and a necessarily compelling principle that grant of a lease contrary to the statutory mandate, cannot be recognized in law nor the coercive process of the State (a judicial order) be issued to compel performance of an illegal act.

The petitioner does not even assert, let alone establish before this Court, that he has a formal instrument of lease by any competent authority. Oral leases of agricultural lands belonging to Hindu Religious Institutions and Endowments are a concept unknown to law. If this illegal practice has been continuing at least in so far as the petitioner is concerned for the past 40 years as claimed in the writ petition, it is a tragic comment on the supervisory discipline of the officers of the Endowments Department. In any event, the petitioner cannot be legally considered a tenant within the framework of the A.P. Charitable & Hindu Religious Institutions & Endowments Act, 1987.

If the petitioner is not a cultivating tenant on the above premise of law, he is not entitled to any of the benefits conferred on landless poor persons under Section 82 of the Act, since the benefits conferred on landless poor persons under Section 82 of the Act is exclusively for cultivating tenants of Endowment Institutions and not all landless poor persons in the State. The benefits under Section 82 of the Act are not available to an encroacher or a person in illegal occupation of endowment property, without the authority of law.

On the aforesaid analysis and for the aforesaid reasons, the petitioner is not entitled to the relief claimed in the writ petition.

As the petitioner's application dated 13.02.2006 for his consideration as a landless poor person is pending before the first respondent who is the competent authority to decide that application, the writ petition is disposed of with this singular direction in favour of the petitioner viz. that the first respondent shall expeditiously and in any event within a period of three weeks from the date of receipt of a copy of this order dispose of the petitioner's application dated 13.02.2006 seeking recognition as a landless poor person, by recording detailed reasons for the decision. The 1st respondent shall communicate the decision to the petitioner within the aforesaid time. The first respondent shall decide and determine the application of the petitioner in accordance with the observations in this order.

The writ petition is disposed of at the stage of admission, after hearing the learned Government Pleader for Endowments. No costs.

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GODA RAGHURAM,J

Dated: 27.04.2006

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